IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.26695 of 2006

Sivakama Sundari Ravi ... Petitioner

Vs.

1. State by Inspector of Police,
   All Women Police Station,
   Teynampet,
   Chennai - 600 018.

2. Ravi Viswanathan ... Respondents

* * *

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to direct the first respondent police to register F.I.R. based on the complaint dated 30.08.2006 given by the petitioner to the respondent police.

* * *

For Petitioner : Mr.S.Y.Masood

For Respondent-1: Mr.P.Kumaresan
Additional Public Prosecutor

For Respondent-2: Mr.V.Padmanabhan,Senior counsel
for M/s.S.Santhosh Kumar

O R D E R

Mr.S.Y.Masood, learned counsel for the petitioner submitted that the petitioner has come forward with this petition seeking the relief of a direction to the first respondent police to register a case on the basis of the complaint given by the petitioner dated 30.08.2006.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a Post-Graduate and was working as apprentice in the Annamalai University for a year. It is also submitted by the learned counsel for the petitioner that the petitioner got married with one Ravi Viswanathan on 03.02.2002 at Hotel Kanchi, Chennai, as per Hindu Rites and Customs. It is

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submitted that the petitioner was given 25 sovereign of gold, a pair of diamond ear rings and 3 kgs. of silver and a sum of Rs.10,000/- for purchasing house hold utensils. It is also submitted by the learned counsel for the petitioner that a sum of Rs.10,000/- also paid as dowry to the bridegroom.

3. The learned counsel for the petitioner submitted that the petitioner joined her husband after wedding and lived with him at Hederabad. It is the case of the petitioner that the petitioner was living with the parents of her husband, viz., father-in-law and mother-in-law as the petitioner's husband was working in Cuttack and the request made by the petitioner and petitioner's brother to the petitioner's husband to take the petitioner to Cuttack was not accepted by the husband of the petitioner. It is also submitted that the petitioner was compelled to reside only along with the parents of her husband and thereafter, the petitioner's husband and in-laws treated the petitioner cruelly and meanwhile the petitioner also became pregnant. It is further alleged that the petitioner was not allowed to go to her parental home for delivery and the in-laws of the petitioner and her husband insisted that she should reside only at Hyderabad and the parents of the petitioner who have visited to the matrimonial home of the petitioner were insulted and the petitioner also not allowed to meet anyone thereafter. It is the further case of the petitioner that the parents of the petitioner's husband locked the petitioner inside the house and never let her to go out. It is further alleged that the petitioner was treated cruelly both physically and mentally.

4. It is further submitted by the learned counsel that in view of the harassment and cruel treatment, the petitioner was constrained to give a complaint on 30.08.2006 before the first respondent police. The learned counsel submits that in spite of the fact that the allegation contained in the complaint constitutes cognizable offences, the first respondent police, for the reasons best known to him, not even registered the First Information Report till date. Therefore, it is contended by the learned counsel for the petitioner that as per the well settled law laid down by the Hon'ble Supreme court as well as the provisions contained under Section 154 of Cr.P.C., the police officer concerned shall mandatorily register the first Information Report in the event of allegation contained in the complaint constitutes cognizable offence.

5. The learned Additional Public Prosecutor, on the other hand, contended that the first respondent police will take all steps in accordance with law and there is delay in registering the case only on the ground that the respondent police received oral instructions from the superior officers to conciliate the matter if the complaint being one like matrimonial case and therefore, it took time as the respondent police called the respective parties and negotiated the matter.

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6. Mr.V.Padmanaban, learned Senior appearing for the proposed accused persons, vehemently contended that the petition filed by the petitioner under Section 482 Cr.P.C. is not at all maintainable. It is also vehemently contended by the learned Senior counsel that if at all the petitioner is having any grievance, the petitioner has to resort to invoke the Writ jurisdiction under Article 226 of the Constitution of India. The learned Senior counsel also argued at length that the non-registration of the First Information Report is only due to the fact that both the parties were called frequently by the respondent and as a matter of fact, the husband of the petitioner appeared before the first respondent police 4 or 5 times. The learned Senior counsel also contended that there is absolutely no fault on the side of the husband of the petitioner or the petitioner's in-laws viz., father-in-law and mother-in-law. The learned Senior counsel also contended that even the allegation contained in the complaint not at all constitutes any cognizable offence. The learned Senior counsel in support of his contentions relied the following decisions :

(1) E.S.Mills Shri Virendra Kumar v. Rajiv Poddar reported in AIR 1985 SC 1668
(2) Venu Srinivasan v. Krishnamachari & Others reported in 2005 (3) L.W. 87
(3) Superintendent of Police v. Tapan Kr.Singh reported in 2003 SCC (Cri.) 1305
(4) Ramkumar, K.R. V. State reported in 2004 (2) CTC 42
(5) Lourdumary v. State reportedin 2004 (3) CTC 700
(6) Ramesh Kumari v. State (N.C.T. Of Delhi) reported in 2006 (1) CTC 666
(7) Mary Angel & Others v. State of Tamil Nadu, etc. Reported in 1999 (2) L.W. (Cri.) 426
(8) Dhandapani v. State by Inspector of Police, etc. reported in 2000 (2) L.W. (Cri.) 863
(9) S.Shreenivasa Rao, etc. v. State by Inspector of Police, etc. reported in 2000 (1) L.W. (Cri.) 429
(10) Palaniappa Gounder v. State of T.N. Reported in AIR 1977 SC 1323
(11) Delhi Municipallity v. Ram Kishan reported in AIR 1983 SC 67
(12) Arun Shankar Shukla v. State of U.P. Reported in AIR 1999 SC 2554
(13) Shyam Prasad Reddy v. State of A.P. Reported in 1991 M.L.J. (Cri.) 369
(14) K.R.Prabhakaran v. The Commissioner of Police, Chennai & another reported in 2005 (2) L.W. (Cri.) 549

7. It is also contended by the learned Senior counsel that the decision of the Hon'ble Apex Court in Ramesh Kumari's

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case reported in 2006 (2) Supreme 243 is not applicable to the facts and circumstances of this case. It is submitted by the learned Senior counsel that in the decision of Ramesh Kumari's case, the Hon'ble Supreme Court has not considered the other provisions contained in the Code of Criminal Procedure as the other provisions contemplate alternative remedies available to the petitioner in the event of the respondent police not registering the case. The learned Senior counsel also placed reliance on the decision of the Division Bench of this Court in a case in Venu Srinivasan v. Krishnamachari & Others reported in 2005 (3) L.W. (CRL.) 87. It is contended by the learned Senior counsel that in that decision the Division Bench of this Court has held that the complainant should ordinarily first avail of his remedy of filing an F.I.R. in the police station under Section 154 (1) of the Cr.P.C. It is also held, according to the learned Senior counsel, that there are three clear alternative remedies available to the complainant, viz., that the complainant can resort to file a petition before the concerned Magistrate under Section 156 (3) of Cr.P.C. and the learned Magistrate can direct registration of the First Information Report after proper investigation into the alleged offence and the last alternative for the complainant is to resort to prefer a private complaint under Section 200 of Cr.P.C. Therefore, by placing reliance on the above said Division Bench decision, the learned Senior counsel for the proposed accused persons vehemently contended that if at all the petitioner is aggrieved for non-registration of the First Information Report by the first respondent police, the petitioner could have resorted to the above said alternative remedies and instead, the petitioner straight away invoked the jurisdiction of the provision under Section 482 of Cr.P.C. and as such the petition under Section 482 of Cr.P.C. is not maintainable.

8. The learned Senior counsel further contended that the proposed accused persons are having locus standi to raise their objections even before the registration of First Information Report. It is contended by the learned Senior counsel for the proposed accused persons were also participated in the enquiry said to have been conducted by the respondent police and this petition under Section 482 of Cr.P.C. is also pending for the last nearly six months and past six months, the accused persons effectively participating in this Criminal Original Petition by filing the impleading petition. It is, on the other hand, contended by the learned Senior counsel that only the petitioner is not having locus standi or competency to file a petition under Section 482 of Cr.P.C., in view of the other alternative remedies very much available for the petitioner herein.

9. I have carefully considered the rival contentions put forward by either side and also perused the entire materials available on record including the complaint given by the petitioner to the first respondent police dated 30.08.2006.

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10. At the outset, it is to be stated by this Court that this matter relates to the alleged ill-treatment, cruelty and subjecting the petitioner to mental torture and agony and ultimately driven the petitioner to resort to give a complaint to the first respondent police. It is also pertinent to note that this Court, at this stage, cannot go into the merits and demerits or truth or falsity of the allegations contained in the complaint at this stage. The undisputed fact remains that till date, the first respondent police has not chosen to register the First Information Report in this case. The explanation given by the first respondent police is that due to the oral standing instructions received from the superior officials in a matter relating to the matrimonial dispute, the police officials should first resort to conciliation and only thereafter they have to resort to register the First Information Report. This Court is constrained to observe that the above said procedure adopted by the first respondent police is unknown to law and against the mandatory provisions contained in the Cr.P.C. under Section 154.

11. It is pertinent to note at this juncture, the well settled principle of law laid down by the Hon'ble Apex Court, in a latest decision in Ramesh Kumari v. State (N.C.T. of Delhi) & Ors. reported in 2006 (2) Supreme 243.

> "3. Mr.Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154 (1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.
>
> 4. That the Police Officer mandatorily registers a case on a complaint of a cognizable

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offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 & 32 of the judgment as under :

> "31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154 (1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. .... In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code."
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> "32. Be it noted that in Section 154 (1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154 (1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should

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not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

Finally, this Court in para 33 said :

"33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

5. The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manners of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty

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bound to register the case on the basis of such an information disclosing cognizable office."

12. The decision of the Division Bench of this Court, relied on by the learned Senior Counsel, of course, pointed out certain alternative remedies; but even in that decision, the Division Bench has not at all closed the doors for the aggrieved persons to approach this Court under Section 482 of Cr.P.C. Though, the decision is relating to a petition filed under Article 226 of the Constitution of India, as already stated above, that Division Bench decision deals particularly in respect of other alternative remedies available to the complainant and only subsequent to the above said Division Bench decision, the latest decision of the Hon'ble Apex Court in Ramesh Kumari's case has came. It is pertinent to note that the Hon'ble Apex Court has categorically held as follows :

> "The ground of alternative remedy nor pending of the contempt petitioner would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer."

Therefore, it is crystal clear that irrespective of other alternative remedies available to the petitioner, the respondent police has to register the First Information Report in the event of the allegations contained in the complaint constitutes cognizable offence.

13. It is also needless to re-iterate that the proposed accused persons have no locus standi to raise their voice at this stage, viz., prior to the registration of the First Information Report. It is well settled by a number of decisions of the Hon'ble Apex Court that the proposed accused persons have no right to interfere into the registration of the First Information Report or interfere into the manner in which the investigation to be conducted in a case.

14. The Hon'ble Supreme Court in a case in Union of India v. W.N.Chadha reported in AIR 1993 SC 1082 held that the accused not entitled to opportunity of hearing at the stage of pending investigation. It is highlighted by the Hon'ble Apex Court that under the scheme of Chapter XII of the Cr.P.C., there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused persons while the proceedings is in the stage of investigation by a police officer. It is also categorically held in that decision that the accused has no right to have any say as regards the manner and method of investigation.

15. The Hon'ble Supreme Court has taken a similar view in yet another decision in Central Bureau of Investigation v. Rajesh

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Gandhi reported in 1997 Crl.L.J. 93 to the effect that the accused cannot have a say as to who should investigate the offence he is charged with and it is further held that the decision to investigate does not attract the principles of natural justice. Therefore, this Court has no hesitation to hold that the accused has no locus standi to raise his objections even before the registration of the First Information Report in this case. But, however, this Court heard the arguments of the learned Senior counsel who has appeared for the proposed accused persons at length and ultimately the above said conclusion arrived to the effect that the accused persons have no locus standi or competency to raise their voice before the registration of the First Information Report.

16. In a case in Mohindro v. State of Punjab reported in 2002 SCC (Cri.) 1087, the Apex Court held that there cannot be enquiry without registration of a criminal case under Sections 157 and 154 of Cr.P.C.

17. The yet another contention put forward by the learned Senior counsel for the proposed accused persons, Mr.V.Padmanabhan, is that the petition filed by the petitioner under Section 482 is not maintainable and the petitioner has to resort only to file a petition invoking the writ jurisdiction under Article 226 of the Constitution of India. I am unable to accept this contention of the learned Senior counsel in view of the settled principle of law laid down by the Hon'ble Supreme Court in PEPSI FOODS LTD., V. SPECIAL JUDICIAL MAGISTRATE reported in 1998 SCC (Cri.) 1400 wherein the Apex Court held that,

> "The power conferred on the High Court under Article 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provision of Article 226."

18. In yet another decision in State of Orissa v. Debendra Nath Padhi reported in 2005 (1) CTC 134, the Hon'ble Apex Court held that,

> "Inherent power of High Court – Width of the powers of the High Court under Section 482 and Article 226 of Constitution of India is unlimited whereunder in the interest of Justice, High Court can make such order as may be necessary to prevent abuse of process of any Court or otherwise to secure ends of justice within the parameters laid down in Bhajan Lals case."

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19. The above settled principle of law laid down by the Apex Court makes it crystal clear that the petition filed by the petitioner under Section 482 Cr.P.C. is very much maintainable as this Court is vested with equal power under Section 482 of Cr.P.C. as per the power conferred to this Court under Article 226 of the Constitution of India and more particularly, under Section 482 of Cr.P.C., this Court can exercise its jurisdiction to prevent abuse of process of any Court or otherwise to secure ends of justice.

20. The last but not least submission made by Mr.V.Padmanabhan, learned Senior counsel appearing for the proposed accused persons is that the allegations contained in the complaint do not constitute cognizable offences. I am afraid that such contention of the learned Senior counsel, on the face of it, is unacceptable. A reading of the complaint of the petitioner dated 30.08.2006 discloses that the petitioner has been prevented to meet her relatives including the parents and further the petitioner was not allowed to leave her matrimonial home to her parental home. It is further seen from the complaint of the petitioner that the petitioner was not only subjected mental cruelty but also subjected physical cruelty. It is specifically alleged by the petitioner to the effect that her in-laws including the father-in-law and mother-in-law and her husband without any valid reasons started to hit her black and blue with whatever object they had in hand without realising the consequence of the same. Therefore, it is crystal clear that there are certain allegations constituting cognizable offences against the accused persons in this case. This being the position, there is absolutely no reason whatsoever for the respondent police to keep the matter pending idle even without registering the case.

21. Therefore, in view of the above said reasons, this Court is constrained to direct the first respondent police to register the case, as per the mandatory requirement contemplated under Section 154 of Cr.P.C., as the complaint of the petitioner dated 30.08.2006 clearly constitutes cognizable offence. It is further directed that the first respondent police after registration of the First Information Report shall expedite the investigation and to complete the same and to file the final report within a period of six month from the date of receipt of copy of the order of this Court.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Inspector of Police,
   All Women Police Station,
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   Chennai - 600 018.

2. The Public Prosecutor,
   Madras High Court,
   Madras.

+ 1 cc to Mr. S. S. Y. Masood, Advocate SR No. 11435

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